FRED CHAFFIN, ET UX.

IBLA 84-268 Decided October 1, 1985

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring four lode mining claims abandoned and void. IMC 53485 through IMC 53488.

Set aside and remanded.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation

   When circumstances indicate that additional location notices filed by a locator relate to previously filed claims and are in the nature of amendments to those previously filed claims, proofs of labor filed with reference to those amended location notices may be credited to the original locations.

APPEARANCES: Fred and Barbara Chaffin, pro sese.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Fred and Barbara Chaffin have appealed from a decision of the Idaho State Office, Bureau of Land Management (BLM), dated December 13, 1983, holding the unpatented mining claims assigned BLM serial numbers IMC 53485 through IMC 53488 abandoned and void for failure to file evidence of assessment work or a notice of intent to hold for the calendar year 1981 as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982), and 43 CFR 3833.2. By letter of appeal, dated January 3, 1984, appellants maintain that assessment work has been performed on their claims every year and that the claims are "valid" under BLM records. In support they submit copies of proofs of labor previously filed with BLM.

On May 8, 1984, this Board suspended review of mining claim recordation cases, including this one, pending determination of the appeal of the decision in Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983). On April 1, 1985, the Supreme Court issued its decision, United States v. Locke, 105 S. Ct. 1785 (1985), in which the Court found section 314 of FLPMA to be constitutional, within the affirmative powers of Congress, and not violative of due process. Consideration of this appeal may now proceed.

An examination of the record discloses the following. On March 1, 1979, BLM received from appellant Barbara Chaffin copies of original location notices for four lode claims which had been located in 1940. Accompanying the location notices was a township map marked to show that the claims were within the SE 1/4 NW 1/4, sec. 10, T. 12 N., R. 15 E., Boise Meridian, Idaho. The location notices referred to the claims as both the "Long View" and "Longe View" numbers one through four, although both appellant and BLM subsequently referred to them in their correspondence as the "Longview" claims. The four were assigned BLM claim numbers IMC 9920 through IMC 9923. A proof of labor for 1979 for the "Longview Mining Claims 1 thru 4" was timely received by BLM.

On September 29, 1980, BLM received a proof of labor for the "Longview 1-4" and also four location notices for the "New Longview" claims one through four along with a map showing the position of the claims within the SE 1/4 NW 1/4, sec. 10, T. 12 N., R. 15 E., Boise Meridian, Idaho. BLM claim numbers IMC 53485 through 53488 were assigned to these locations. In 1981 and 1982 BLM received proofs of labor for the "Longview 1-4" along with proofs for other claims held by appellants. On October 2, 1983, a proof of labor for the "New Longview 1-4" was received by BLM. In its December 16, 1983, decision BLM informed appellants that a review of their claims showed that no proof of assessment work for 1981 had been received for the "New Longview" claims identified as IMC 53485 through IMC 53488, that they were therefore considered abandoned and void, and that the 1983 proof of labor was being returned.

On appeal, appellants argue that the second set of location certificates were locally recorded and filed with BLM in order to rename their claims. This action was taken, they assert, on the advice of their attorney. Appellants contend that there is only one set of claims and that they have filed annual proofs for this single set in each year since 1979.

A review of the two separate case files does, indeed, establish that annual proofs of labor were filed in 1979, 1980, 1981, and 1982 for the Longview claims (in file IMC 9920-9923) and in 1983 for the New Longview claims (in file IMC 53485-53488). Thus, if in fact the Longview and New Longview are the same claims, the filing requirements for each year, through calendar year 1983, have been met.

[1] Adjudication of the instant appeal therefore turns on the question whether the New Longview claims filed in 1980 are "amendments" of the Longview claims recorded in 1979 or "relocations" of the claims, as those terms were defined in R. Gail Tibbetts, 43 IBLA 210, 86 I.D. 538 (1979). As noted therein, the functional distinction between an amendment and a relocation is that the former is a location made in furtherance of the original location while the latter is a location which is adverse to the prior location. Id. at 213-17, 86 I.D. at 540-42. If the 1980 locations are an amendment of the first set of claims, there is only one set of claims and the single annual filings made each year may be deemed sufficient under section 314 of FLPMA. On the other hand, if the 1980 locations were in the nature of relocations, it would be necessary to show that proofs of labor or notices of

intention to hold were filed for each set of claims. Practically speaking, if the 1980 locations are deemed relocations, both the 1940 and 1980 locations will be deemed abandoned and void under section 314(a) of FLPMA since no annual filing was made for the 1980 locations in 1981 and 1982 and no annual filing was made for the 1940 locations in 1983.

As noted above, appellants aver that the purpose of the 1980 locations was to change the name of the original locations and that this was done on the advice of their attorney. We noted in R. Gail Tibbetts, supra, that where an amended location "merely changes a notice of location without attempting to enlarge the rights appurtenant to the original location, such amended location relates back to the original." Id. at 219-20, 86 I.D. at 543. We expressly referenced a change in the name of the claim as an example of such an amended location. Id.

Part of the confusion was no doubt generated by appellants' failure to indicate that the 1980 location was intended to be an amendment of the 1940 original location. As we noted in R. Gail Tibbetts, supra, the absence of such an identification gives rise to an inference that a relocation was intended. Id. at 228-29, 86 I.D. at 547. Thus, some of the responsibility for the treatment of these claims as new locations must rest with appellants. On the other hand, no provision was made in the regulations relating to the filing of amended notices of location with respect to claims already recorded.

Subsequent to the decision of the Idaho State Office, however, the BLM Deputy Director issued Instruction Memorandum (IM) No. 84-685 (August 27, 1984). In this IM, the Deputy Director noted that the filing of an amended location notice does not necessitate the creation of a new case file. Moreover, the Deputy Director recognized that claimants will not always be clear in describing the intended effect of an additional location notice. Thus, he stated:

> [w]here an additional location notice is filed which is not described as either an amended location or a relocation, a rebuttable presumption will arise that a relocation was intended. R. Gail Tibbetts, et al., supra. [1/] In this case, the owner of the claim shall be sent a letter asking the owner to clearly specify whether this location notice is an amendment or a relocation. The letter shall contain the statement that if the Bureau does not receive an answer within 30 days, the Bureau shall consider the document to be an amended notice of location.

When the Idaho State Office issued its decision it did not have the benefit of the Deputy Director's guidance. On appeal, however, appellants

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1/ While the Board in Tibbetts held that the failure of a subsequent location notice to indicate whether a new or amended location was intended gave rise to an "inference" that a relocation was intended, the inference in such circumstances is in the nature of a rebuttable presumption resulting in allocation of the burden to show the contrary to the mining claimant.

clearly assert that the 1980 location filing was intended to amend the 1940 locations. Moreover, under IM No. 84-685, had appellants failed to respond to a direct inquiry, the 1980 locations would have been treated as amendments of the earlier locations for the purposes of compliance with section 314 of FLPMA. The proper course of action in the instant case is, therefore, to set aside the decision below and direct that case files IMC 53485 through IMC 53488 be consolidated with case files IMC 9920 through IMC 9923. 2/ Appellants are directed to make future annual filing referencing the originally assigned case file numbers.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case files are remanded.

James L. Burski
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Will A. Irwin
Administrative Judge

2/ See Ralph C. Memmott, 88 IBLA 377 (1985).